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Article

Labour standards and international trade – Some issues

By **Manoj Gupta**

Last month United States of America withdrew trade benefits available to Bangladesh, one of the least developed countries, under the Generalised System of Preferences (GSP) quoting lack of worker security and workers' rights in Bangladesh. Section 502(b)(2)(G) of the US Trade Act specifies that developing countries that have not taken or are not taking steps to afford internationally recognized worker rights to workers in their country, may not be designated as a beneficiary country. Pursuant to the said provision, USA has withdrawn the benefits given to Bangladesh. According to the US Trade Representative, recent tragedies that took the lives of over 1,200 garment factory workers highlighted some serious shortcomings in workers' rights and workplace safety standards in Bangladesh. These recent happenings, both the tragedy and the withdrawal of benefit, have again brought to light issues concerning labour standards which remain unresolved even after years of debate.

This debate, between the developed countries on one side and the developing or least developed countries on the other side, is regarding the growing concern among the former that since cost of labour is one of the important components of the cost of final product, violations of labour standards to keep the cost low, would lead to what is termed as "social dumping". Though intersection of labour laws (labour standards, including their rights) with international trade is a matter of lengthy discussion, this article, seeks to discuss some of the issues that arise in this context.

WTO agreements and labour standards

WTO agreements do not deal with labour standards as such. Developed countries have, however, always wanted to include such provisions in the WTO's multilateral agreements. According to them this will ensure better compliance by the developing or the least developed world and further, in case of any violation, the latter can be brought to book by way of dispute settlement and eventual trade sanctions. The matter was discussed at the Singapore Ministerial Conference in 1996 where the Ministers rejected the use of labour standards in the multilateral agreements, terming it as protectionist, and agreed that comparative advantage of some countries must in no way be put to question. No working committee was hence formed though it was decided that the WTO and ILO Secretariats would continue their existing collaboration. The debate could not go any further even at the Seattle or the Doha Ministerial Conferences. As per the WTO, four sub-sets of the main question, of viability of labour standards in international trade, are:

- Do the exports from countries having lower standards of labour rights have an unfair advantage?
- In case of any advantage, should countries only trade with those that have similar labour standards?
- Should WTO rules explicitly allow governments to take trade action against countries not complying with such standards?
- Is the WTO the proper place to discuss and set

rules on labour, or to enforce them?

Taking the last question first, Havana Charter of 1947 had acknowledged that unfair labour conditions, particularly in production for export, create difficulties in international trade. Apart from that, there are no express provisions in the GATT 1947 or in any other WTO Agreement. Primarily, WTO is a place to set rules for trade in goods between Member countries. Trade in services has also been covered with the signing of the General Agreement on Trade in Services (GATS). However, labour standards do not fall within the 'trade' arena. Many Member countries have included at least some clauses relating to labour or human rights in the Free Trade Agreement or Economic Cooperation Agreements. Since Article XXIV of GATT deals with FTAs, should there be an objection for including human rights or labour standards into other WTO Agreements as well? However, if labour standards are to be brought within the purview of WTO Agreements, substantial structural changes may be required in all the existing WTO Agreements. It may not be a worthwhile exercise. For the same reasons, question No. 3 also has to be answered in the negative.

Are there any internationally accepted labour standards? International Labour standards are generally available in the ILO conventions. Not all countries have ratified even the eight core or fundamental ILO conventions. It may be interesting to note that even USA has ratified only two of the eight core or fundamental labour conventions of the ILO, while Bangladesh has given its consent for 7 of these conventions. It is not the question of whether or not a particular country has a set of legal instruments that institute internationally acceptable

labour standards. It is the actual implementation of those standards within the economy of a country which is more important and that is what differentiates one country from the other.

In this regard, it may be noted that ILO's Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Conference on 18-6-1998 stresses that labour standards should not be used for protectionist trade purposes, and that nothing in that Declaration and its follow-up shall be invoked or otherwise used for such purposes. These clauses on labour or human rights in the FTAs, though applicable only in relation to trade between two countries, effectively amounts to external control of the economies of the lesser developed countries while also interfering with the way their respective governments manage their human resources.

Effect of labour laws in global trade

Considering again the US-Bangladesh case, Bangladesh has on 15-7-2013, in knee jerk reaction, amended its labour laws to incorporate provisions for resolution of conflicts over legal financial rights through arbitration, ensuring safety measures for workers at their workplaces, mandatory election for workers' participation committees and compulsory group insurance policies. The amended law further includes provisions allowing formation of trade unions without informing the factory owners. Thus, withdrawal of the benefits, in fact triggered the amendments in the law. It is now to be seen how effectively they are implemented (US law asks for effective implementation!).

Looking from another angle, due to such denial of market access, a big market is denied to the developing country. By such a move, image of the

beneficiary country suffers, leading to reduction in FDI in-flow which is very crucial for technological upgradation. As a result, the financial capacity of the beneficiary country may further deteriorate, leading to even further worsening of working conditions. The State, no matter how much it wants to improve the same, would not be able to do so, owing to lack of resources. Sanctions, which were originally meant to ensure enforcement of labour welfare, could lead to further unemployment or scaling down of welfare provisions. Withdrawal of such benefits will also push the workforce employed in exports to move to even less paying jobs catering to the informal market.

On the other hand, if export/trade continues to grow, the wages and working atmosphere will improve. Here, it may be noted that the Singapore Ministerial Declaration had also observed that economic growth and development fostered by increased trade and further trade liberalization contribute to promotion of labour standards. There are no easy answers to questions No.1 and 2.

While USA has withdrawn the GSP Benefits to Bangladesh, EU has taken a decision not to

withdraw the benefit. The press release in this regard states that decision to withdraw the EU GSP for Bangladesh must be avoided, as it would have far-reaching consequences for jobs and for the economy of Bangladesh. So we see that even the developed countries are divided on the issue. Note in this regard should also be taken of WTO's Trade Report 2013, released last month, which acknowledges that regulatory convergence and non-tariff barriers are the greatest challenges to the trading system of the future.

International trade has a social dimension to it. Not only it has to be rule-based in order to reap its benefits, but further should have a distant vision to it. Protection of domestic industry and jobs from competition that is unfair is fine, but the importance of mutual or collaborative growth shall not be underestimated. As stated in the WTO's 2013 Report, future of trade will be affected by the extent to which politics and policies successfully address issues of growing social concern.

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Trade Remedy News

Anti-dumping actions by India

Product	Country	Notification No.	Date of Notification	Remarks
Acetone	European Union, South Africa, Singapore and USA	15/1/2012-DGAD	22-7-2013	Time to complete investigation extended till 14-12-2013
Acetone	Saudi Arabia and Taiwan	14/16/2012-DGAD	23-7-2013	Initiation of ADD investigation
Cefadroxil Monohydrate	European Union	14/8/2011-DGAD	19-7-2013	Final finding issued recommending imposition of ADD

Product	Country	Notification No.	Date of Notification	Remarks
Digital Versatile Discs - Recordable (DVD-R and DVD-RW)	China, Hong Kong and Chinese Taipei	15/10/2013-DGAD	18-7-2013	Initiation of sunset review investigation
Flexible Slabstock Polyol	Australia, EU and Singapore	14/01/2013-DGAD	12-7-2013	Initiation of ADD investigation
Rubber chemicals - MBT, CBS, TDQ, PVI, TMT and PX-13(6PPD)	China	16/2013-Customs (ADD)	5-7-2013	ADD extended for 1 year till 4-5-2014, consequent to initiation of review
Meta Phenylene Diamine (MPDA)	China	14/4/2012-DGAD	1-7-2013	Time to complete investigation extended till 18-9-2013
Poly Vinyl Chloride Paste Resin	European Union	15/2013-Customs (ADD)	3-7-2013	Definitive ADD to continue till 24-6-2015
PX-13 (6PPD)	Korea RP	17/2013-Customs (ADD)	5-7-2013	ADD extended for 1 year till 4-5-2014, consequent to initiation of review
Vitrified/Porcelain Tiles	China	15/20/2011-DGAD	24-7-2013	Final findings concerning new shipper review

Trade remedy actions against India

Product	Country	Notification No.	Date of Notification	Remarks
Frozen Warm Water Shrimp	USA	A-533-840	16-7-2013	Final results of anti-dumping duty administrative review and final no shipment determination
HEDP	USA	A-533-847	3-7-2013	Final results of anti-dumping duty administrative review and revocation of order (in part)
Hot Rolled Carbon Steel Flat Products	USA	C-533-821 & A-533-820	5-7-2013	Rescission of administrative review of anti-dumping and countervailing duty due to withdrawal of request by domestic industry
Oil Country Tubular Goods	USA	Inv. Nos. 701-TA-499-500	10-7-2013	Notice of institution of countervailing and AD investigation by International Trade Commission
		A-533-857 & C-533-858	29-7-2013	Initiation of countervailing and ADD investigation by US-DOC

Product	Country	Notification No.	Date of Notification	Remarks
Polyethylene terephthalate film, sheet, and strip	USA	Inv. Nos. 701-TA-415 and 731-TA-933-934	5-7-2013	US ITC to conduct five year sun-set review of ADD and countervailing duty
Stainless Steel Bars and Rods	EU	Council Implementing Regulation (EU) No. 721/2013	22-7-2013	Amends countervailing duty imposed under Implementing Regulation (EU) No. 405/2011
Hot Rolled Carbon Steel Flat Products	USA	C-533-821 & A-533-820	5-7-2013	Rescission of administrative review of anti-dumping and countervailing duty due to withdrawal of request by domestic industry
Steel Threaded Rod	USA	C-533-856	24-7-2013	Initiation of countervailing investigation by US-DOC Notice of Institution by USITC-27-Jun-13
Steel Wire	Columbia	Columbia Official Journal No. 48.856	17-7-2013	Safeguard investigation initiated

WTO News

Automobiles at centre stage at WTO

Automobiles were at the center of major disputes and meetings in the WTO last month. While EU along with Japan has sought consultations with Russia on the latter's certain recycling fees on imported automobiles, Ukraine was questioned by Japan, in the Council for Trade in Goods meeting, on imposition of safeguard duty on automobiles.

In the dispute brought before the DSB on 9-7-2013 questioning the recycling fees, EU alleges that imposition of such levy by Russia in progressive manner depending upon the category of vehicle and granting of exemption to domestic vehicles and vehicles imported from Belarus and Kazakhstan, affords protection to the domestic industry. EU further alleges that these measures are inconsistent with Articles I:1, II:1 and III:2 of the GATT, 1994. On the same lines, Japan has, on 24-7-2013, notified

the WTO Secretariat, that the Russian measures in addition, favour purchase of parts/components produced in Russia, Belarus or Kazakhstan over parts/components produced and imported from other WTO members. According to Japan these measures are in violation of various provisions of TRIMS and TBT. As per press reports, USA and Ukraine have also expressed their desire to follow EU and Japan in this regard.

In the case of imposition of safeguard duty on automobiles by Ukraine, Japan has, on 11-7-2013, questioned the basis for the measure, also adding that Ukraine had not provided adequate opportunity for prior consultations as required by the Safeguards Agreement. EU, Russia, Australia, Korea and Turkey have also shared the same concerns.

ITA agreement talks suspended – US blames China

Consultations to further enhance the scope of WTO's Information Technology Agreement (ITA) have been suspended on 17-7-2013. The ITA presently covers a wide range of information technology products including computers, semiconductors, software, etc. and the negotiations, if concluded, would have included some 256 more items in the list of items already eligible for duty free import in more than 75 countries (including all countries part of EU) which are signatories to the agreement. The proposed list covered items like cellphones, tablets and flat-panel televisions, etc. As per reports, USA blames China for the failure of the talks as China had sought withdrawal of around 106 items from the list. China calls for removal of products such as next-generation semiconductors, semiconductor manufacturing equipment, medical devices, and even some products such as printers and monitors which are already covered by the present ITA. Recently, India has also made its intentions clear that it will not be part of ITA-II.

Panel established for Peru's measures on Guatemala's agricultural exports

On 23rd July 2013, Dispute Settlement Body of WTO has established a panel to examine the dispute "Peru – Additional Duty on Imports of Certain Agricultural Products" [DS457] upon

request from Guatemala. The measure at issue is the "additional duty" imposed by Peru on imports of certain agricultural products, such as rice, sugar, maize, milk and certain dairy products, which Guatemala considers to be in violation of Article 4.2 of Agreement on Agriculture, Articles II:1(b) and XI:1 of the GATT 1994 and Articles 1, 2, 3, 5, 6 and 7 of the Customs Valuation Agreement. Argentina, China, El Salvador, EU, India and USA have reserved their third-party rights to participate in the panel's proceedings.

WTO publishes World Trade Report 2013

World Trade Report 2013 has been published by the WTO on 18-7-2013. This report, noting some major trends and fundamental economic factors affecting international trade, states that expansion of trade needs to be supported by a stable financial and monetary system which delivers a sufficient volume of trade finance at an affordable cost, particularly for developing countries, and macroeconomic policies that promote exchange rate stability. It further notes that a greater focus on regulatory convergence will be required as trade opening, especially in the context of non-tariff measures beyond WTO disciplines, is taking place outside of the WTO. This report concludes that while China may face decline in the next decade, India along with countries in Middle East and Sub-Saharan Africa will become the fastest growing parts of the world.

News Nuggets

USA amends procedures concerning anti-dumping duty

United States of America has modified its procedure for determination of separate anti-dumping duty rates for individual exporters from Non-market economy (NME) countries.

In respect of de-facto criteria for determination of such rates, now with effect from 28-6-2013, the US will consider, on a case-by-case basis, issuing supplemental questionnaires to identify

and review additional documentation and information that would directly or indirectly relate to the issue of de facto government control by any level of government in cases where the respondent's initial questionnaire responses do not provide sufficient information to support its claim. Further on the question of automatic grant of separate rate, the US is of the view that in cases where a respondent has a producing entity in the NME and an affiliated reseller in an ME country, they would be examining on a case-by-case basis, whether any supplemental information is required to determine if the affiliated reseller is under government control through the producer located in the NME country. USA considers Armenia, Belarus, Georgia, Kyrgyz Republic, Moldova, China, Azerbaijan, Vietnam, Tajikistan, Turkmenistan and Uzbekistan as NME countries.

China and EU manage to avert trade war

Trade war between the European Union and China was avoided at the last minute with the two coming to an agreement. While European Union has decided to keep in abeyance anti-dumping investigation on Chinese solar panels, China has on its part put on hold investigations concerning wine and poly silicon (raw material used for manufacture of solar panels) exported from EU, which was initiated in retaliation to EU's decision. As per reports, the deal centers on a commitment (price undertaking) by about 90 Chinese solar companies, accounting for about 60% of the EU market, not to sell their products in the bloc below a certain price floor per watt. Some of the solar panel manufacturers in EU are not satisfied with the deal and have voiced their concerns while making clear their intentions to go to the court against any such deal.

Ratio Decidendi

Continuation of ADD review proceedings in EU after withdrawal of support from part of domestic industry

The European Union's General Court (Fifth Chamber) has held that the EU institutions are entitled to continue the review procedure, in case of expiry of anti-dumping duty, notwithstanding the fact that the 50% threshold referred to in Article 5(4) of the basic regulation, in reference to the community industry (domestic industry), was no longer met. The court in this regard relied on an earlier case [*Interpipe Niko Tube and Interpipe NTRP v. Council* [2009] ECR II-383] in which it was held that Article 5(4) does not place any

obligation on the Commission to terminate an anti-dumping proceeding in progress where the level of support for the complaint falls below a minimum threshold. It was noted that if, under Article 9(1) of the basic regulation, the Commission is not under an obligation to terminate a procedure when a complaint is withdrawn, that must apply *a fortiori* when the degree of support for a complaint merely falls. It was also observed that Articles 5(4) and 9(1) are applicable to review procedures, pursuant to Article 11(5) of the basic regulations. On the question of community production, the court upheld the Commission's action to continue with

the review, when the request for review was partially withdrawn, considering the fact that output of the only supporter of review was around 48% of the community production and therefore constituted a major portion of Community production. Earlier, in the course of the review investigation, two of the producers, who were earlier in favour of review,

informed the Commission that they opposed the continuation of the anti-dumping measures at issue, and hence the level of support for the request for a review fell slightly below the 50% threshold. [*Philips Lighting Poland v. Council of the European Union* – EU Judgment of General Court (Fifth Chamber), dated 11-7-2013].

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